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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/869,333      | 07/26/2001  | Franco Pamparana     | 101615-00012        | 5701             |

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EXAMINER

HENLEY III, RAYMOND J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1614

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |   |  |  |
|------------------------------|---|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/869,333    | <b>Applicant(s)</b><br>PAMPARANA, FRANCO |  |
|                              | <b>Examiner</b><br>Raymond J Henley III | <b>Art Unit</b><br>1614                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-14, 16, 18-20, 22, 24, 25, 27, 28 and 30-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16, 18-20, 22, 24, 25, 27, 28 and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**CLAIMS 12-14, 16, 18-20, 22, 24, 25, 27, 28 AND 30-35 ARE PRESENTED FOR  
EXAMINATION**

Applicant's Amendment filed June 8, 2004 has been received and entered. Accordingly, the specification at page 3 and claims 12-14, 18-20, 24, 25, 27 and 28 have been amended; claims 17 and 23 have been canceled and claims 30-35 have been canceled.

In light of the above amendments and Applicant's remarks at page 7 of the amendment, the rejection of claims 19-20, 22 and 23 under 35 U.S.C. 112, first paragraph, as set forth in the previous Office action dated March 8, 2004 is withdrawn.

***Claim Rejection - 35 USC § 103***

Claims 12-14, 16, 18-20, 22, 24, 25, 27, 28 and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breivik et al. (U.S. Patent No. 5,502,077, cited by the Examiner) in light of Garrison et al. (The Nutrition Desk Reference, cited by the Examiner), each of record, for the reasons of record as set forth in the previous Office action at pages 5-7, as applied to claims 12-14, 16-20, 22-25, 27 and 28.

Applicant's arguments at pages 8-9 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

Applicant has argued that with respect to Breivik et al., nothing therein describes the treatment of patients having suffered from a myocardial infarction or what effect, if any, the compositions would have if administered to such patients.

In response thereto, the Examiner points out that it is this very point that the Examiner identified as being the difference between the teachings of Breivik et al. and the claimed subject

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matter. Applicant's argument fails to address, much less rebut, the Examiner's position (set forth in the previous Office action at pages 6-7) as to why, even in light of such a difference, the claimed subject matter would have nevertheless been obvious.

Applicant has also argued that Garrison fails to make up for the deficiencies of Breivik et al. by merely pointing out that which the Examiner has already indicated as having been taught by Garrison. This argument, as the one above, fails to rebut the reasoning set forth by the Examiner as why the claimed subject matter would have been obvious to the skilled artisan when the teachings of Breivik et al. and Garrison were taken into consideration by the artisan.

Accordingly, the claims are deemed to remain properly rejected and none are allowed.

Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

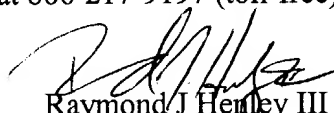
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J Henley III whose telephone number is 571-272-0575. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on 571-272-0584. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Raymond J Henley III  
Primary Examiner  
Art Unit 1614

June 17, 2004